IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

MFA.No. 1281 of 2002()

OPMV.1266/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
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APPELLANT: PETITIONER:

THOMAS, S/O. OUSEPH,
RESIDING AT ALAPPADAN HOUSE, PALLIKUNNU,
VARANDARAPPILLY P.O., THRISSUR DISTRICT.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SRI.PRINCE.K.ELIAS

RESPONDENTS:
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1. P.L.VARGHESE,
RESIDING AT PAZHAMPILLY HOUSE, P.O. EDAVANAKKAD.

2. JOSE, S/O. VARGHESE,
RESIDING AT PAREKKATTIL HOUSE, KOTHAKULANGARA P.O.
ANGAMALI. (DELETED).

3. THE UNITED INDIA INSURANCE COMPANY LTD.,
NORTH PARUR.

THE NAME OF 2ND RESPONDENT IS DELETED FROM PARTY ARRAY
VIDE ORDER DATED 11.10.2007 ON IA.2250/07.

BY ADV. SRI.JOHN KOSHY

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 15/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO.1281 OF 20O2

Dated this the 15th day of November, 2007

JUDGMENT

Koshy, J.

Appellate-petitioner suffered serious injuries in a motor accident on 12.4.1995. He claimed a compensation of Rs.3,00,000/-. The Tribunal found that the accident occurred due to the negligence of the driver of the vehicle insured by the third respondent Insurance Company and the Insurance Company was directed to deposit an amount of Rs.1,15,500/-. The only dispute in this appeal is regarding the quantum of compensation awarded. As regards the injuries are concerned, the Tribunal has considered the matter in detail. The Tribunal observed as follows:

> "In addition to the oral version medical records are available Exhibit A5 wound certificate issued from the Aswini Hospital, Thrissur has recorded the details of injuries sustained to the petitioner. He sustained the following injuries:-
>
> 1) Crushed lacerated wound and skin loss on the right leg.
> 2) Lacerated wound on the right foot.
> 3) Lacerated wound on the left ankle.
> 4) Lacerated wound on the dorsum of right foot.
> 5) Abrasions on the right hip left thigh.
> 6) Bleeding from the Urethra.

7) Pain and swelling on right foot.
8) Fracture of 2nd and 3rd meta tarsal bone.
9) Fracture public rami of both side.
10)Rupture urethra.

On 7.9.1996 a disability certificate was issued by the Urologist certifying that the petitioner was under his treatment since 11.7.1995. The person is suffering from post traumatic impassable Bulbar Urethral stricture. He was operated twice in July and March 96. He continues to have avoiding difficulty which is likely to persist as a permanent disability in spite of any surgical procedure. The estimated disability percentage is 25 to 30%. Exhibit A9 series are the various discharge cards from the Elite Missin Hospital. The petitioner was treated there by the urologist for traumatic stricture of Bulbar urethra. The initial inpatient treatment in the Elite Mission Hospital, Thrissur was from 12.4.95 to 14.5.95 is evidenced by Exhibit A9(2). The initial treatment was for a period of one month. Again he had inpatient treatment and was admitted in the hospital on 22.5.95. During this time he had inpatient treatment for 30 days. This is evident from Exhibit A9(3) ascending urethrogram was done. Public rami fracture was with minimal dislocation. The petitoner was again in the hospital on 10.6.1995. This time he had an inpatient treatment for 13 days. This is evident from Exhibit A9(4). Urethrotomy was done on 12.6.95. As per Exhibit (A5) he was again admitted in the hospital on 11.7.95 due to the complications and was for the removal of catheta withdraw trial. This time he had inpatient treatment for 3 days. In March 1996 he was again hospitalised. This is evident from Exhibit A9(1). This time he had an inpatient treatment in the Elite Missin Hospital for 12 days. Even after a lapse of about one year he continued inpatient treatment in the Elite Mission Hospital following the blunt injury to the abdomen. The patient was developing difficulty in passing urine and chatheter was used. This time also chatheter was done few times and the patient was feeling difficulty in passing urine. Subsequently he was managed by antibiotics. Exhibit A11 series are the medical prescriptions issued to the petitioner for the period from 1996-97. He produced medical

> prescriptions (7 in Numbers) which shows that throughout 96-97 he was consulting urologist for the problem. Exhibit A12 series are various lab reports issued ot the patient during the span of 96-97. The Doctor who issued the disability certificate to the petitioner was examined as PW2. PW2, the Urologist who attended the petitioner through out while he was working in the Elite Mission Hospital deposes that the patient was treated by him from 22-5-95 onwards. He came with fracture pelvis and rupture of the urethra. Endoscopic operation was done on 12-6-95. He was subjected to open repair to the rapture of urethra which was done on 4.3.96. Exhibit X2 and X3 are the case sheets. Acording to the Doctor presently the patient has problem due to the rupture of the urethra. He needs regular follow up and needs regular urethral dialation which the patient himself is doing as per the instructions. The Doctor also said that this procedure may have to continue life long. The percentage of disability of the person was assessed to be 25 to 30%. Surgery cannot permanently cure the problem."

2. The doctor has also stated that he can do light work, but persistently he may have urinary infection and he has assessed the disability on the basis of voiding difficulty and resultant urinary treat infection. But the doctor stated that he can run a shop or some other light work. It was also stated that the urethral dilation is a painful process and he has to do urethral dilation once in three weeks. The Tribunal also found as follows:

> "Evidence discloses that there was severe injury to the abdomen and the urethra was ruptured. There was fracture to the public rami both sides. Due to the complications following the injuries the patient was on prolonged treatment. Even now he needs medical attention and consultation. Heavy labour will be difficult for him. At the same time he may engage in gainful activities."

Since permanent disability was proved by the doctor as 25 to 30% and the Tribunal found that the petitioner suffered serious injuries, for purpose of awarding compensation, the percentage of disability should not have been reduced to 18%. We are of opinion that there was no reason for reducing the percentage of disability assessed by the doctor, PW2, who is a competent doctor employed in the Medical College Hospital. Even though it was argued that in view of difficulties he is unable to do any work and he is entitled to 100% disability compensation, we go by only medical certificate proved by PW2 for assessing the permanent disability. Hence we take 25% as the permanent disability. In the application it was stated by the claimant that he was getting Rs.2,400/- per month. Exhibit A7 identity card shows that he was a registered head load worker. Exhibit A10 issued by the Thrissur District Head Load & General Workers Union certifies that the petitioner was getting Rs.300/- daily. The Tribunal taken only Rs.1,500/- as monthly income. He was maintaining a family. In the absence of evidence, even if we take that he was getting Rs.80/- per day and he may get average 22-26 days work per month, he must get Rs.1,800/- per month. The Tribunal has fixed 17 as the multiplier as he was 32 years old, in accordance with the second schedule. We find that no enhancement is necessary in that regard. Compensation payable for disability and loss of earning power will be:

$$1800 \times 12 \times 25 \times \frac{17}{100} = 91,800$$

The Tribunal has awarded Rs.55,080/- under this head. So, the petitioner is entitled to an additional amount of Rs.36,720/- under the head of disability and loss of earning power. For pain and suffering the Tribunal awarded only Rs.6,000/-. The Tribunal found that the petitioner needs dilation every three weeks and it is a painful process. He has urinary infection also, apart from there was severe injury to the abdomen and the urethra was ruptured and fracture of pubic rami and 2nd and 3rd meta tarsal bone. Atleast Rs.10,000/- ought to have been given for pain and suffering. So, another Rs.4,000/- is awarded under that head. Therefore, additional amount payable to the petitioner is Rs.40,720/-. The above amount should be deposited by the third respondent Insurance Company with 7.5% interest from the date of application to the date of deposit over and above the decreed amount by the Tribunal. On deposit of the above amount, the petitioner is allowed to withdraw the same.

The appeal is allowed, partly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO. 1281 OF 2002

JUDGMENT

15.11.2007